The Solicitors' Journal

Vol. 98 January 30, 1954 No. 5

CURRENT TOPICS

The Income of the Professional Classes

THE chairman of Barclays Bank, Ltd., in his statement on the report and accounts of the company for the year ended 31st December, 1953, made a special plea to the Chancellor of the Exchequer for the middle classes, and "notably members of the professions, against whom the dice are specially loaded, because they cannot possibly make adequate provision out of income for their dependants and for their own old age." He remarked that it was probably true "that the net aggregate saving of the salaried and professional workers as a whole to-day is a minus quantity (even when their life policy premiums are included), if regard is had to the endless stream of realisation of past savings to meet the expenses of illness, education and the like, together with the constant strain of death duties." He suggested that the best means of making taxation less intolerable for the middle classes would be through the earned income allowance, "a concession which the Chancellor has already expressed a desire to make," and added that "not only might the proportion be made more favourable, but, even more important, the upper limit of this allowance should be removed." Another evil of high taxation on professional men was mentioned on 21st January by Mr. F. BARRACLOUGH, chief education officer of the North Riding of Yorkshire, in his presidential address to the annual meeting of the Association of Education Officers. In a reference to the problem of the gulf between the public system of education and the public schools, he stated that "the complexion of public schools may be appreciably altered . . . unless new and acceptable ways and means are found to offset the effects of high taxation and the lowered standards of living of professional men." This is not only a matter of righting an injustice to a section of the community, but of avoiding a dangerous lack of balance in the social order. The Royal Commission should have some positive recommendations on this subject.

Mr. Attlee

AT a ceremony at Manchester on 22nd January, when the freedom of Manchester was conferred upon him, the Right Honourable CLEMENT RICHARD ATTLEE, Leader of Her Majesty's Opposition, referred to his father, Mr. Henry Attlee, and his visit to Manchester forty-eight years ago, when, as President of The Law Society, he was entertained by the civic authorities on the occasion of The Law Society's annual meeting there. The LORD MAYOR referred to the new Freeman as "a statesman who has rendered outstanding service to the nation during some of the most critical years in its history." In recalling this one of many links between politics and the solicitors' branch of the legal profession, we respectfully associate ourselves with this tribute, which is rightly due to a great man, who though himself called to the Bar, chose the wider field of social service and eventually rendered services to his country far beyond what he can have at first contemplated.

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Byles on Bills

THE curious case of Mr. Justice Byles, who not only wrote a book on Bills three years before his call to the Bar, but also regularly rode on a horse called "Bills" to the courts after his elevation to the Bench, was brought into public notice last week by the joint efforts of the LORD CHIEF JUSTICE and Sir W. VALENTINE BALL. The former referred to Mr. Justice Byles' fondness for horses in *Daly* v. *Cannon* (*The Times*, 21st January), in which he decided that a goldfish was not an "article" within the meaning of s. 154 of the Public Health Act, 1936, and that it could therefore legally be exchanged by a rag-and-bone man for rags or other refuse. The latter wrote to *The Times* of 22nd January that Byles' Compendium of the Law of Bills of Exchange came to be known as *Byles on Bills*, and "those who 'went daily to the Temple' had therefore no difficulty in finding a name for the judge's horse." Since Mr. Justice Byles the invention of the internal combustion engine has done much to restrict the scope of any member of the Bench who would wish to emulate his unconventional habits, but among the cyclists and motor-cyclists who still invade the City every morning, no one has yet observed a judicial rider. Some judges drive or are driven in cars, others walk and some have been seen in public transport. The writer has had the honour of tripping over a Chancery judge's feet in the Underground, and of receiving the repartee "So am I," to his perfunctory "I'm sorry." He also treasures the recollection of travelling on the upper deck of an omnibus together with a covey of judges, in the days of petrol rationing. Such events invite solemn rather than flippant thoughts. It is sad to think that an opportunity to make a new version of the old joke "Byles on Bills" is not likely to occur.

Poor Man's Lawyer

THE Report for 1952–53 of the Manchester and Salford Poor Man's Lawyer Association shows that their centres had 4,214 new cases (as against 4,263 in the previous year), of which 1,183 were referred to solicitors and 235 were referred to legal aid committees. The analysis of cases into types shows a predominance of matrimonial and family cases (46 per cent.), with landlord and tenant cases second at 15 per cent., and the remainder consisting of the familiar miscellany of accidents, industrial injuries, wills, pensions, defamation, debt and so on. The Report quotes in full from the Second Report of The Law Society on the Operation and Finance of Pt. I of the Legal Aid and Advice Act, 1949, the points made by the Advisory Committee in their Report to the Lord Chancellor. One of the points made was that solicitors prevent litigation by advising, and in the London centres 90 per cent. of cases were resolved without litigation. Under the Government scheme money is available for the expensive "surgical operation" of litigation, but none for the cheaper "preventive medicine" of legal advice. Hundreds of matrimonial causes could be prevented, the Committee report, if legal advice was available in the early stages. A Standing Committee has been set up as a result of a conference called by the National Council of Social Service, at which the Association attended, to consider further representations to the Government. The Report concludes with a tribute to the services given by conducting solicitors, honorary advisers and members of the Bar.

AS OTHERS SEE US

"The lawyer, I think, must be a man of law; that is imperative. It is quite indispensable in any successful exercise of the profession, but my private view is that to reach the very highest standards of performance he must not only be a man of law but in some degree a man of letters; for in the world of books and reading there is something not to be gained elsewhere."[1]

This contributor, taking a day off from "Talking Shop," cannot refrain from putting this most true and apt quotation in the forefront of an article in which he plans to mix a literary-legal nostrum[2] to his own prescription. And yet, having done so, he regrets it immediately; for can it be said that in the field of law he aspires to "the very highest standards of performance"? Regrettably, no. Is he then wholly or in "some degree" or in *any* degree a man of letters? Emphatically not. But upon this treacherous ground of literary anthology some comfort at least may be derived from the thought that however well or ill informed the compiler may be, his selection, like certain lives, offers an uninsurable risk. Either it will be too commonplace for the selective or it will be too *recherché* for the catholic; whilst one and all must lament a sad neglect of their favourite authors.

Inevitably one begins with Chaucer, whose genius it was first to capture the quintessence of the "man of lawe," and then to hold it fast in the aspic of six centuries—and all this in one devastating couplet of horrid candour:—

Nowher so besy a man as he ther n'as
And yet he semed besier than he was.

But one must taste the full savour:—

A sergeant of the lawe ware and wise . . .
All was fee simple to him in effect,
His pourchasing might not ben in suspect.
Nowher so besy a man as he ther n'as,
And yet he semed besier than he was.
In termes hadde he cas and domes alle,
That fro the time of King Will. weren falle.
Thereto he coude endite, and make a thing,
Ther coude no wight pinche at his writing.
And every statute coude he plaine by rote,
He rode but homely in a medlee cote, . . .

That the learned sergeant was a meritorious draftsman seems plain enough from the statement that "Ther coude no wight pinche at his writing"; and from the third line it may be inferred that he spared no pains upon proper investigation of title. Less impressive, perhaps, is his mastery of the "domes" (which I understand to mean "opinions" or "rulings" or perhaps just "records") and of every statute from King Will. What, I wonder, would he make of the domes alle and the statutes that burden our brains and bookshelves now? As to the detail that "he rode but homely in a medlee cote," it may be permissible to observe that in some few and very learned chambers, the centuries have as yet brought no marked sartorial change. And those who find this comment in indifferent taste must needs take warning that there is far, far worse to come. For, by and

[1] From The Rt. Hon. Sir Norman Birkett's address to a Session of The Law Society at Scarborough, 1953.

[2] The nature of which appears from the title-heading.

large, the lawyer has not been beloved of the author, explain or excuse it as we may.

The experiment of seeing ourselves as others see us, though it must needs shock, may also stimulate, at first to some reflection and then, however distantly, to action. Let us first cushion the shock and start gently with the solicitor's waiting-room. What has Anthony Trollope to say on that subject? Not, we must allow, an author of extreme or exaggerated views; if he showed any extravagance it was in the naming of his characters in style with the affectation of his day, no better nor worse in that respect than Dickens.[3] For the rest he was an industrious and not undistinguished servant of the Post Office, rode to hounds two or three times a week and by self-discipline turned out a thousand (or was it two or three thousand?) words of fiction nearly every day of his writing life. And this is how he describes[4] the office ante-room of the Duke of Omnium's law agents:—

> "The house of business of Messrs. Gumption and Gagebee, the duke's London law agents, was in South Audley Street, and it may be said there was no spot on the whole earth which Mr. Sowerby so hated as he did the gloomy, dingy back sitting-room upstairs in the house. He had been there very often, but had never been there without annoyance. It was a horrid torture-chamber, kept for such dread purposes as these" [discussion of Mr. Sowerby's finances] "and no doubt had been furnished, and papered, and curtained with the express object of breaking down the spirits of such poor country gentlemen as chanced to be involved." [This, in Mr. Sowerby's case, took a lot of doing.] "Everything was of a brown crimson—of a crimson that had become brown . . . The windows were never washed . . . There was a bookcase full of dingy brown law books . . . but no one had touched them for years, and over the chimney-piece hung some old legal pedigree table, black with soot . . ."

Some, I daresay, may object that this is not a factual account but a mere reeling of the dejected spirit of Mr. Sowerby. Yet the author himself anticipated the objection, being at pains to add that, upon the independent account of Mr. Gresham of Greshamsbury, he (the author) was constrained to compare that room unfavourably with the torture chamber of Udolpho, where victims were "dragged out limb from limb, the head one way and the legs another"—with much else in gruesome concord whereof readers of this journal may be spared the repetition. Mr. Gresham, at all events, so much detested the room that "from the day that his affairs took a turn" (it is to be hoped, for the better) he would never even walk down South Audley Street.

Charles Dickens himself—of whose works Trollope, by the way, was no great admirer—does not much improve upon this description in his account[5] of Dodson and Fogg's clerks' office:—

> "The clerks' office of Messrs. Dodson and Fogg was a dark, mouldy, earthy-smelling room, with a high wainscoted partition to screen the clerks from the vulgar gaze: a very loud-ticking clock: an almanack, an umbrella-stand, a row of hat-pegs, and a few shelves, on which were deposited several ticketed bundles of dirty papers, some old deal boxes with paper labels, and sundry decayed stone ink bottles of various shapes and sizes."

I forbear to suggest that this could very well stand to-day for a description of solicitors' offices in general up and down the country; besides, we are not allowed to advertise. I should like to suggest, though, that if and where such conditions do exist—and I did not say that they do—it *is* advertising, and that of a particularly low order. Perhaps our most talented President, who has made his mark not only upon law and letters but latterly upon the advertising ban, would care to take a look at it from that point of view! If we cannot advertise our virtues, why advertise our vices? It would be a modest start for the advertising campaign and an agreeable change, no doubt, for the Council to do some snap inspections of waiting-rooms.

But to return to Dickens. His account of the clerks' office at Dodson and Fogg's, does, we must admit, compare quite favourably with his description in the same work[6] of the "sequestered nooks" or public offices of the legal profession:—

> "They are, for the most part, low-roofed, mouldy rooms, where innumerable rolls of parchment, which have been perspiring in secret for the last century, send forth an agreeable odour, which is mingled by day with the scent of the dry rot, and by night with the various exhalations which arise from damp cloaks, festering umbrellas and the coarsest tallow candles."

But enough of inanimate objects; once more to mistake after the vulgar manner Pope's true antithesis,[7] the proper study of mankind is man.

Home truths from old and trusted friends are very hard to bear, and so it is with this mild reproof from that gentlest of spirits, Isaac Walton, more chastening than all the savage satires of a Jonathan Swift or a Samuel Butler:—

> "*Piscator:* Sir, I hope you will not judge my earnestness to be impatience: and for my simplicity, if by that you mean . . . that simplicity which was usually found in the early Christians, who were, as most Anglers are, quiet men and followers of peace—men that were so simply-wise as not to sell their consciences to buy riches, and with them vexation and fear to die; if you mean such simple men as lived in those times when there were fewer lawyers, when men might have had a lordship conveyed to them in a piece of parchment no bigger than your hand, though several sheets will not do it safely in this wiser age . . ."[8]

How quietly, almost imperceptibly, does the gentle reproach steal upon us, cushioned on every side by this immensely long sentence: it seems that Piscator must get his line fouled upon a relative clause at any moment, but somehow he does not.

The dimensions of indentures naturally call to mind the gravediggers' scene in "Hamlet." Reserving it as an open question how the scene is best played in modern times, the theory that Shakespeare intended it for high tragedy seems to me to be wholly untenable, and for the very good reason—I state it with reluctance—that the most notable cranium in the cast was that of a lawyer. Why of a lawyer? Well simply because, of all human relics and symbols of temporal mortality, a lawyer's skull could best be counted upon to stifle sighs and evoke laughter against a sombre background. It was, if I may so express it, a sure hit with the public. By its own, or more accurately its late owner's identity, it advertised itself in no uncertain manner; neither the deafest nor the dumbest groundling could mistake the nature of the entertainment. And see, once again, how the master mind and hand order the whole business:—

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[3] No comments on Mr. Plum, please.
[4] "Framley Parsonage," chap. XXVII.
[5] "Pickwick Papers," chap. XX.
[6] *Ibid.*, chap. XXXI.
[7] Know then thyself, presume not God to scan,
The proper study of mankind is man.
[8] "The Compleat Angler," Pt. I, chap. 1.

"*Hamlet:* There's another; why may not that be the skull of a lawyer? Where be his quiddities now, his quillets, his cases, his tenures and his tricks? Why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Hum! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries; is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of dirt? Will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures? The very conveyance of his lands will hardly lie in this box, and must the inheritor himself have no more, ha?"[9]

Of this passage one cannot fail to observe that in no measure does it suggest it as any matter for regret that this unhappy lawyer's skull became filled with dirt; and if he was knocked about the sconce with a dirty shovel, we are not led to suppose that he received by such usage anything more than his just deserts. No doubt much more could be said on the subject, but this is not a commentary upon the plot. I will merely note in passing that seventeenth century audiences must have been much better versed in legal idioms than are those of to-day. Imagine one of Terence Rattigan's characters discoursing upon discretionary trusts, contingent reversions or dependent relative revocation!

At worst this excerpt from "Hamlet" is macabre, broad and pungent humour, wholly devoid of malice, but of course it is a very different matter when we come to the satires of Swift:—

"In answer to which I assured His Honour that in all points out of their own trade they [lawyers] were usually the most ignorant and stupid generation among us; the most despicable in common conversation; avowed enemies to all knowledge and learning; and equally disposed to pervert the general reason of mankind in every other subject of discourse as in that of their own profession."

Again:—

"He [my Master] said, it was common when two *Yahoos* discovered such a *Stone* in a Field, and were contending which of them should be the Proprietor, a third would take the advantage, and carry it away from them both; which my Master would needs contend to have some Resemblance with our *Suits at Law:* wherein I thought it for our credit not to undeceive him; since the Decision he mentioned was much more equitable than many Decrees among us: Because the Plaintiff and Defendant there lost nothing beside the *Stone* they contended for; whereas our *Courts of Equity* would never have dismissed the Cause while either of them had any thing left."[10]

Well, as Sir Norman Birkett has said of the first of these passages, it is a beautiful piece of writing. Even if we had not been told by Sir Norman[11] that Swift was a disappointed litigant, most of us, I fancy, could have inferred something of the kind from the Dean's observation, not devoid of truth, that "laws are like cobwebs, which may catch small flies, but let wasps and hornets break through." We know just what sort of a client the Dean must have been; we have heard it all before, and so often.

Far more agreeable, as it seems to me, is the amiable and sardonic buffoonery of Lord Byron. How good is "Don Juan": well worth reading again. The comparison that I select is between Haidee's father, the pirate Lambro—"Lambro, our sea-solicitor"[12]—and (you have guessed) an attorney-at-law:—

Let not his mode of raising cash seem strange
Although he fleeced the flags of every nation,
For into a prime minister but change
His title, and 'tis nothing but taxation;
But he, more modest, took an humbler range
Of life, and in an honester vocation [*sic*]
Pursued o'er the high seas his water journey
And merely practised as a sea-attorney.[13]

This, of course, is no more than a good-natured dig in the ribs, as we may prove to our satisfaction by studying his lordship's ill usage of the Lakeland poets. See, for example, how he lambasts poor William Wordsworth:—

He wishes for "a boat" to sail the deeps—
Of ocean?—No, of air; and then he makes
Another outcry for "a little boat"
And drivels seas to set it well afloat.
If he must fain sweep o'er the ethereal plain,
And Pegasus runs restive in his "Waggon"
Could he not beg the loan of Charles's Wain?
Or pray Medea for a single dragon?
Or, if too classic for his vulgar brain
He fear'd his neck to venture such a nag on
And he must needs mount nearer to the moon,
Could not the blockhead ask for a balloon?[14]

No; it must be allowed that on this occasion, at least, we were let down lightly.

It is time to seek out something in a less derisive strain; and here we may stumble upon the discovery that the authors most sympathetic to our much-abused calling are, by and large, the very same that have had some practical experience of the law from the dispensing side. It is really quite remarkable what a difference it makes if an author happens to know what he is talking about. This, for example, is Honoré de Balzac's vignette of a lawyer, adopted from the translation by Katharine Prescott Wormeley:—

"He bore some resemblance to a retired chief of a civil service; he had the peculiar face of a bureaucrat, less sallow than pallid, on which public business, vexations and disgust leave their imprint—a face lined by thought, *and also by the continual restraints familiar to those who are trained not to speak their minds freely.* It was often illumined by smiles characteristic of men who alternately believe all and believe nothing, who are accustomed to see and hear all without being startled, and to fathom the abysses which self-interest hollows in the depths of the human heart."[15]

Who, I wonder, could have written the penetrating phrase that I have put into italics, save one who had suffered in his own person those very restraints of which the author speaks? To genius nearly everything is possible; we know only from Balzac's life that he, at all events, was writing from practical experience.

Finally, though many favourites have been passed over (and no doubt I shall hear of them from correspondents), I must not fail to mention Soames, for:—

"Those countless Forsytes, who, in the course of innumerable transactions concerned with property of all kinds (from wives to water rights) had occasion for the services

[9] "Hamlet," Act V, sc. 1.
[10] "Gulliver's Travels, A Voyage to the Houyhnhnms," chap. V and VII.
[11] In his address to The Law Society, Scarborough, 1953.
[12] "Don Juan," Canto III, v. 26.
[13] *Ibid.*, Canto III, v. 14.
[14] *Ibid.*, Canto III, vv. 98 and 99.
[15] "La Comédie Humaine"; Ursula at p. 47 of the author's copy.

of a safe man, found it both reposeful and profitable to confide in Soames. That slight superciliousness of his, combined with an air of mousing amongst precedents, was in his favour too—a man would not be supercilious unless he knew!"[16]

Nor must I forget dear old James and the unhappy Bustard. Completing the full circle, here once again is the authentic, glowing realism of truth; here is the genius of a Chaucer:—

"He (Soames) was really the head of the business, for though James still came nearly every day to see for himself, he did little now but sit in his chair, twist his legs, slightly confuse things already decided, and presently go away again, and the other partner Bustard, was a poor thing, who did a great deal of work, but whose opinion was never taken."[17]

"ESCROW."

[16] "The Man of Property" by John Galsworthy, chap. V.

[17] *Ibid.*, chap. V.

A Conveyancer's Diary

NATURE OF THE CROWN'S CLAIM TO BONA VACANTIA

THE practitioner is more used to applying rules than to analysing them, and when he comes to a paragraph in the Administration of Estates Act, 1925, which says that in default of relations of the specified classes the intestate's estate passes to the Crown as *bona vacantia*, there is in the ordinary way little incentive to discriminate between the title of (say) a lone cousin in Australia and that of the Crown to the estate. In either case there is a windfall; in the latter case the Treasury is the fortunate recipient; and that is all there is to be said. But there is, in fact, a vital difference between the titles of the takers in these two cases. The claim to *bona vacantia* is not confined to property which lacks an owner because on an intestacy there is nobody of the right degree of relationship to succeed to it; it can, and sometimes does, arise on the dissolution of a corporation, where no question of succession can possibly exist. It is a form of confiscation, and the recent interesting decision of the Court of Appeal in *In the Estate of Maldonado, deceased* [1954] 2 W.L.R. 64; *ante*, p. 27, shows that there is no tendency here to confuse this right of the Crown with the right to succeed *stricto sensu* to the property of a person on his death.

The deceased died, domiciled in Spain, intestate. She left a considerable amount of personal estate in England. According to the maxim *mobilia sequuntur personam* the distribution of the estate thus fell to be regulated by the law of the domicile, that is, of Spain, and according to the provisions of the relevant article of the Spanish Civil Code the State of Spain was, in default of certain classes of relatives of the deceased, entitled to inherit the estate as ultimate heir. The State of Spain accordingly applied to the Probate Court for a grant of administration to be made to its attorney. This claim was opposed by the Crown, which counter-claimed for a grant to be made in its favour as being entitled to the personal estate in England as *bona vacantia*.

The area of the dispute between the contesting States was very narrow, since the bulk of the argument advanced on behalf of the Crown was accepted by the State of Spain. This argument was summarised by Sir Raymond Evershed, M.R., in his judgment in a series of propositions in the following manner. First, it was said, movable property situated within the jurisdiction of any State is *prima facie* subject to the laws of that State, and if such property is found to be ownerless it will pass to that State. This is, at least, the law of England, and in the case supposed the property is taken by the Crown as *bona vacantia*. But, secondly, to this general rule there is an exception, the rule of private international law which is accepted by most civilised States and forms part of the law of those States, and which is expressed in the formula *mobilia sequuntur personam*. According to this rule of private international law if a national of another country dies domiciled in that country, the persons who are by the law of that country entitled to succeed to the deceased's movable property either under a will recognised by the law of that country or on an intestacy are treated in England as being entitled to the deceased's movable property in England. Thirdly, the extent of the exception expressed by the formula *mobilia sequuntur personam* is a matter to be determined in each State by the law of that State.

Up to this point this argument was accepted by the plaintiff. The contest began with the Crown's fourth and final proposition. This was that if a national of another State dies domiciled in that State and intestate according to the laws of that State, the English courts will not recognise as having a title to the movable property of the deceased in this country any persons who are not "successors" in accordance with some generally recognised nexus of personal relationship with the deceased, or, at least, will not recognise as a successor the foreign State itself, which has made itself the successor by its own laws. This argument was supported by the accepted rule of English law that effect will not be given here to the purely fiscal laws of another country, so that if a claim by a foreign State is based on its right to confiscate ownerless property, that claim, however good within its own jurisdiction, will not be upheld in our courts.

The precise question which arose in this case had never been the subject-matter of a decision in this country, but the converse case where a foreign State claimed to be entitled to property here on the basis of its own confiscation law arose in *Re Barnett's Trusts* [1902] 1 Ch. 847. This claim was rejected on the principle already mentioned. In that case the State to claim was the old Imperial Austrian Government, and the relevant article of its code made it clear that, in the circumstances, the claim was not based on succession. In the present case evidence was given before the court of first instance on the Spanish law applicable, and the decision of the trial judge on this question (which was a finding of fact, as all decisions on the state of a foreign system of law are) was that according to the Spanish law the Spanish State was a true heir in circumstances such as these, and did not take by title paramount analogous to the right of the Crown here to *bona vacantia*.

The Court of Appeal refused to recognise the distinction which the Crown sought to draw between an individual heir bearing some sort of relationship to the deceased and a *persona ficta*, such as a corporation, a municipality, or even the State itself, which, by the law of a State, is designated to succeed to property as heir. In accepting, in accordance with the maxim *mobilia sequuntur personam*, the foreign State's law of succession, English law recognises the foreign State as the arbiter of what that law of succession is to be, and if such recognition involves (as it must) the recognition of distinctions between different relations, however arbitrary

they may seem to be to us, it is impossible to stop short of recognising the foreign State itself as the successor when, according to its own law, it is a successor. According to the relevant article in the Spanish civil code, the Spanish State took the property of the deceased in this case for certain defined purposes of a charitable nature, and it was conceded in argument for the Crown that if under this provision the property of the deceased had passed not to the State itself, but to some corporation or other body of persons for application for precisely similar purposes, there would have been no reason for not giving effect to this provision in this country. If, therefore, there were some substance in the argument of the Crown that there is no difference essentially between the claim of a foreign State to succeed to property as heir and a similar claim to appropriate ownerless property by a process of confiscation, any attempt to distinguish between the rights of different classes of heir (including the State itself) as provided in the relevant foreign code involved distinctions just as arbitrary as any which could be discerned between a claim to succeed as heir and a claim to confiscate. It was, further, conceded that if under a valid will property had been given to the State of Spain, that State would have been treated as a true successor to the property by the law of England, and this showed that the question of the nature of the title of a State to take property cannot be property approached, as the Crown in this case sought to approach it, on the basis of a refusal to recognise any right of a State to succeed to the property of an intestate other than the title paramount of a State to take ownerless property.

As a matter of purely municipal law the nature of the title by which the State claims to be entitled to the property of intestates in default of heirs of the required degree of natural relationship is doubtless largely, if not wholly, immaterial. But when it comes to the destination of the property situated abroad of a person who dies intestate domiciled in England, this question immediately became a vital one. The right upon which the court were asked to adjudicate in the case under review was that of the Spanish State to succeed as heir, but one result of the decision has been to bring out the distinction between a right of that kind and the right of a State to confiscate ownerless property, and to show that the Crown's right to *bona vacantia* clearly falls within the category of confiscatory rights. That, from the point of view of our law, is the principal interest of this case.

"A B C"

Landlord and Tenant Notebook

GROUND GAME, GRANTS, AND GAS

THE Ground Game Act, 1880, is headed "An Act for the better protection of Occupiers of Land against injury to their crops from Ground Game," and, in my submission, this gives a more accurate description of the measure than that provided by one commentator, who says that the object is "to enable occupiers of land to protect their crops against the ravages of hares and rabbits." Legally, there was nothing to prevent them from so doing, apart from the Act; and it seems likely that the Legislature, having recently found that merely permissive agricultural legislation was useless because tenant farmers readily accepted agreements contracting out of the statutes concerned, had decided to protect them against themselves.

Continuing this captious criticism, I observe that the same commentator claims that s. 1 places the tenant in such a position that he can destroy every hare or rabbit that puts in an appearance on his land. But all I have in mind on this occasion is that *Mason and Another* v. *Clarke* [1954] 2 W.L.R. 48 (C.A.), *ante*, p. 28, suggests that "may" might have been more apt than "can"; for the tenant in that case had had to resort to gas, a weapon not in use in 1880 when, however, the fertility of the species was no less than it is to-day.

The first section of the Ground Game Act, 1880, gives every occupier of land, as incident to and inseparable from his occupation of the land, the right to *kill* and take ground game thereon, *concurrently* with any other person who may be entitled to kill and take ground game on the same land. Provisos follow, the important ones for present purposes being: (1) The occupier shall kill and take ground game only by himself or by persons duly authorised by him in writing: (*a*) The occupier himself and one other person authorised in writing by such occupier shall be the only persons entitled under the Act to kill ground game with *firearms*; (*b*) No person shall be authorised by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any *one* other person *bona fide employed* by him for reward in the taking and destruction of such ground game. The second section is substantially declaratory, providing that, if an occupier gives to any other person a title to kill and take ground game, he shall nevertheless retain and have the same right to kill and take ground game as is declared by s. 1; and that, save as aforesaid, the occupier may exercise any other or more extensive right which he may possess. The third section expressly avoids contracting out.

The tenant defendant in *Mason and Another* v. *Clarke* held his farm of the second plaintiffs (a company) and the agreement "reserved" to them, "subject to the provisions of the Ground Game Act, 1880, all the game, rabbits, wild-fowl and fish with liberty for itself and all other persons authorised by it to preserve, hunt, course, kill and carry away the game," the tenant agreeing—again subject to the Ground Game Act—not to shoot or otherwise sport on the land. The first plaintiff claimed sporting rights under a verbal agreement with the company; and while certain issues arose out of the legality of that agreement, it will be convenient to defer mention of the facts giving rise to those issues for the present, and to deal with landlord-and-tenant points which came before Croom-Johnson, J., at first instance, when a man with two assistants had ferreted for rabbits with the defendant's consent and the defendant, having engaged or authorised the county agricultural executive committee to gas rabbits in his hedgerows, was sued for breach of the tenancy agreement and for derogation from grant (the co-called "reservation" being, in effect, the grant of a *profit à prendre*: *Wickham* v. *Hawker* (1840), 7 M. & W. 63). There were also complaints that the defendant had kicked over snares, ordered the plaintiff off his fields and permitted three men to ferret. Croom-Johnson, J., gave judgment for the plaintiffs.

The defendant's appeal succeeded. Dealing with the derogation from grant point, Denning, L.J., referred to *Peech* v. *Best* [1931] 1 K.B. 1 (C.A.), as laying down the proposition that this meant that he was not to destroy wilfully game or rabbits except in the proper exercise of rights of cultivation

and good husbandry. *Peech* v. *Best* was, in fact, a case in which a grantee of sporting rights successfully sued for interference caused by the erection of training stables and living accommodation. But the court had cited it and cited and reviewed a considerable number of older authorities, a perusal of which suggests that, as in other cases, the meaning of "wilfully" may well be in issue. I think it is fair to say that the grantor's motive as well as the nature of the land may be relevant factors. Intentional interference with the right granted has been held to be actionable in a number of cases, but activities which will indirectly reduce the amount of game are not a derogation provided either (*a*) they are referable to ordinary user of the particular land, or (*b*) leave a substantial portion of the land stocked with game. *Jeffryes* v. *Evans* (1865), 19 C.B. (N.S.) 246, showed that a farmer grantor might cut down covers for the better cultivation of the farm, the grantee having just as much right to shoot over the land as before; cutting furze and underwood in the ordinary course of cultivation, though it meant fewer birds, was not wilful destruction. *Gearns* v. *Baker* (1875), L.R. 10 Ch. 355, was a case in which ordinary cultivation was emphasised, the grantor dealing with his estate as other landowners deal with their estates, and Mellish, L.J., insisting on the absence of any express purpose of injuring the right of shooting. In *Dick* v. *Norton* (1916), 85 L.J. Ch. 623, Eve, J.'s judgment in favour of the shooting tenant was based substantially on the fact that the defendant was felling timber for mercantile rather than for agricultural reasons.

It could, of course, not be said that the destruction embarked upon with the assistance of the C.A.E.C. was not wilful, but, in the opinion of the Court of Appeal, such wilful destruction was not a derogation from grant when rights of cultivation and good husbandry were being furthered; and as the rabbits had become a pest the gassing of the hedgerows was justifiable and so was the ferreting.

Denning, L.J., held—and Romer, L.J., was apparently of the same opinion—that, in view of this construction of the agreement, it was unnecessary to consider the "subject to the provisions of the Ground Game Act, 1880," qualifications at all, but nevertheless expressed the view that the defendant could successfully rely on that statute. Both the ferreting and the gassing were, it was held, covered by the above-mentioned s. 1 (1) (*b*): this limits the right to authorise other people to members of the family, regular employees, etc., "or any one other person *bona fide* employed by him for reward in the taking and destruction." As regards the ferreting, the statement of facts, "a man with two companions went ferreting in the hedgerows with the defendant's consent," is amplified in the judgments: the man had written authority, and he was to keep the rabbits so killed; Denning, L.J., said that assistants need not be authorised in writing, Romer, L.J., that a person authorised was entitled to *bona fide* assistance. The latter also mentioned that the rabbits would belong to the lessors, but does not deal with the question which then suggests itself, whether in that case the man was employed for reward. As to the gassing, the full facts were that the agreement had been made after threats of compulsory action and that the operation was performed by one man assisted by the tenant's son. Romer, L.J., stressed the former consideration, concluding that the effect was that the gassing was not the result of any act of the defendant; Denning, L.J., rather less cogently, reasoned that employment included indirect employment, so that the functionary engaged by the committee was *bona fide* employed by the defendant, etc.

So much for the construction of the agreement and the interpretation of the Ground Game Act, 1880. When the other issue raised in the case came to be considered, it appeared that the defendant was entitled to judgment for quite different reasons, a taint of illegality affecting, somewhat fortuitously, the plaintiffs' rights. So different are those reasons that I propose to devote a separate article to their examination.

R. B.

HERE AND THERE

INDEFINITE ARTICLE

HAMLET, in his more lucid moments, knew a hawk from a handsaw and it is comforting to be assured, in these not extravagantly sane days, that the Lord Chief Justice knows a goldfish from a goal post and, by inference, a pig from a pepperpot or a bull from a bulldozer. It is partly in order that the sanity of these great primary distinctions may be maintained that the Law Courts exist at all. They exist to save us all from that mazy, dazy frame of mind in which anything may be just an aspect of anything else, or any old word may have any old meaning. If they are reproached with being preoccupied with arguments about words, the answer is that few things are so important in this world as the meaning of words, that astonishing code of signs by which each of us, imprisoned in his own little fortress of flesh, can signal to his fellows a desire for a slice of brown bread and butter or his reflections on all the subleties of Aquinas or Einstein. It is as important that words and combinations of words should be capable of conveying a precise and unmistakable meaning as that in the routine and the emergencies of ships at sea the morse code should convey a precise and unmistakable meaning. Words can, of course, also be used artistically to convey mood or colour or atmosphere, but that is not the use which one expects in an Act of Parliament, though all too often, to the mental despair but the financial profit of the lawyers, one gets something very like it. It was something very like it that presented the Queen's Bench Division with the problem in the leading case of the goldfish, *Daly* v. *Cannon*, when it was required by an inexplicably zealous local authority to interpret the words "any article whatsoever" in s. 154 of the Public Health Act, 1936, and to say what Parliament in its wisdom, or, more likely, its mental weariness, was seeking to convey when, in the context of the commercial activities of rag dealers, it settled on a word so protean that, starting etymologically by meaning "a little joint," it may now equally well represent a clause in a document or a euphemism for a piece of domestic crockery. For practical purposes the draftsman might just as well have said: "Oh, *you* know—thingummy." He would have done much better if, dropping out of Parliamentese, he had said (if, indeed, that was what he meant): "These dealers aren't to give anything at all to a child under fourteen. And that means *anything*—animal, vegetable or mineral, animate or inanimate, alive or dead, flesh, fish or fowl."

GOLDFISH IN WONDERLAND

As anyone, except perhaps the officials of a local authority, might have foreseen, the argument ranged hilariously over the whole wide and fantastic wonderland laid open to the

court. When it was suggested from the Bench that a somewhat exacting standard of scholarship was being required of rag and bone men in expecting them to use the Oxford Dictionary as one of the manuals of their trade, counsel for the prosecutor, the Chief Sanitary Inspector for Ilford, replied that they "have paid very careful attention to the wording of the statutes." (One is reminded of those business-minded immigrants who, long before they set out for our shores, are said to take their first English lessons in the perusal of the Bills of Sale Act.) A fascinating question raised in the course of the argument was what earthly or watery interest a chief sanitary inspector could have in the transfer of ownership of a goldfish, unless these solitary and unobtrusive creatures are joining cats, dogs, goats and monkeys in the class of pets prohibited to the tenants of the more exclusive council houses. No doubt there are denizens of the deep so obscene as to constitute a danger to health, but would they come within the term "article"? Would a gift of a shark or a devil fish rank as a gift of an "article"? Parrots, Lord Goddard recalled, may communicate psittacosis to human beings, but what diseases, asked Mr. Justice Byrne, can a goldfish spread and how can they be disinfected? One is haunted by a mental picture of children harbouring a contaminated goldfish and soon developing a dreadful neurosis of blowing bubbles in their baths.

NO TROJAN HORSE

THEN in the midst of this wonderland Mr. Justice Byles, somewhat recalling the White Knight, came riding by on his horse Bills, said to have been named after his classic textbook. The Lord Chief Justice recalled his steady equestrianism when counsel cited him as an authority for holding that a horse is an "article," and submitted that if the word was capacious enough to hold a horse, there could be no difficulty in fitting in a goldfish. But the Divisional Court was disinclined to assign to the late judge's faithful mount the function of a Trojan Horse to convey a whole bellyful of strange creatures into the vital heart of the section. The whole provision struck Lord Goddard as remarkable. "What a peculiar provision," he said. "If a rag and bone man offered me a drink I dare say I should not accept it, but I don't see why it should be a crime." The incident suggested might well form the subject of a conversation piece by one of the Lord Chief Justice's artist neighbours in the region of the King's Road, Chelsea. The outcome of the case was that the common law construed the word "article" according to common usage and it was held to put too great a strain on language to call a goldfish an "article." The local authority have purchased this valuable piece of knowledge at a price of about £50 in costs. The Ministry of Health have said: "The judgment is noted."

RICHARD ROE.

REVIEWS

Six Lectures for Justices. Prepared by the Training Board of the Magistrates' Association, with an Introduction by The Right Hon. LORD SIMONDS, Lord Chancellor. 1953. London: The Magistrates' Association. 6s. net.

This is a course of six lectures, covering 117 pages, prepared by the Training Board of the Magistrates' Association in accordance with the Lord Chancellor's model scheme for the elementary training of magistrates. Lord Simonds has himself written the introduction. They are apparently designed to be delivered as lectures but they will also make easy reading for any magistrate.

The first lecture or chapter contains valuable advice on conduct in court and there follows an exposition of practice and procedure in magistrates' courts. Chapters on evidence and problems of punishment and treatment come next and then there is one on domestic proceedings and bastardy. In this chapter matters of substantive law as to desertion, cruelty and neglect are explained but elsewhere the matters of law mentioned relate only to procedure and evidence. The last chapter covers, *inter alia*, the issue of process, taking of recognisances, legal aid and duties under the Lunacy Act. Adoptions and procedure in juvenile courts are not specifically dealt with, though the special punishments for juveniles are.

Newly appointed magistrates will find these lectures most helpful, as giving a lucid and concise account of their duties and of court procedure. This publication will, we think, admirably serve the purpose for which it was designed.

The Iron and Steel Act, 1953. Reprinted from Butterworth's Annotated Legislation Service. With General Introduction and Annotations by WALTER GUMBEL, LL.B., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law, and KENNETH POTTER, M.A., of the Middle Temple and South-Eastern Circuit, Barrister-at-Law. 1953. London: Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

This reprint follows the general plan of the earlier volume dealing with the Iron and Steel Act, 1949. The latter Act nationalised the Iron and Steel Industry and created the Iron and Steel Corporation. The present Act denationalised the industry and provides for its return to private ownership and for the dissolution of the Corporation. The Act also creates the Iron and Steel Holding and Realisation Agency for the purpose of returning the industry to private ownership. The public supervision of the industry is entrusted to the Iron and Steel Board now established. The introduction to this book consists of thirty pages of explanatory matter summarising the provisions of the Act. The main part of the book sets out the text of the 1953 Act, annotated section by section, with ample notes and cross-references. Other matters dealt with include the supervision of the Iron and Steel Industry, and the disposal of the assets of the Iron and Steel Corporation of Great Britain. This handy volume contains much detailed information, and will give the practitioner all the guidance he may require in the implementation of the Act.

The Law of the Air. By Sir Arnold Duncan McNair, Q.C. Second Edition, by MICHAEL R. E. KERR, M.A., of Clare College, Cambridge, and of Lincoln's Inn, Barrister-at-Law, and ROBERT A. MACCRINDLE, LL.B., of Gonville and Caius College, Cambridge, and of Gray's Inn, Barrister-at-Law. 1953. London: Stevens & Sons, Ltd. £3 3s. net.

This is an up-to-date edition of a well-known work first published in 1932., Air Law was then already important, for 1932 was the year of the Carriage by Air Act, which gives statutory force in our country to the Warsaw Convention, still the chief source of the international law on the liability of air carriers. But in the twenty-odd years since Sir Arnold McNair first produced his book the wonderful progress which has been notable in the science and practice of aviation has been, if not matched, at least recognised in the march of legislation both constitutional, as in the Civil Aviation and the Air Corporations Acts, and regulative, as in the Non-International Carriage Order, 1952.

To add another obvious reason for welcoming the appearance of this edition, the working out in a comparatively new area of fact of the principles of liability for damage and of insurance, for example, stands in special need of up-to-date exposition. And one feels that the chief distinction of the book is its firm grounding in changeless principle. Too superficially, no doubt, the student has learned that no action lies in trespass or nuisance by reason only of flight of aircraft over property, but that liability for damage thereby caused is absolute in the owner of an aircraft. The statute which so enacts, however, is so hedged about with conditions that the author has no difficulty in justifying his incursion into the common law of trespass, nuisance and negligence which he undertakes with relish and with consummate learning. The exact implications of the maxim *cujus est solum* are examined historically and by the aid of cases relating to protruding structures and the like. It seems at first sight a little confusing that, having established that no right to privacy exists except by agreement, the author should

declare there to be little doubt that invasion of privacy by spying from a helicopter is actionable. But we are forced to agree that his invocation of the well-known case of *Hickman* v. *Maisey* is not, in this context, fantastic.

The book is comprehensive and contains appendices setting out the statutes and orders, and a good index.

Wilshere's Criminal Procedure. Third Edition. By H. A. PALMER, M.A. (Oxon), of the Inner Temple, Barrister-at-Law, Assistant Master of the Supreme Court, and HARRY PALMER, M.A. (Oxon), of the Inner Temple, Barrister-at-Law. 1954. London: Sweet & Maxwell, Ltd. £1 2s. 6d. net.

"Harris and Wilshere's Criminal Law" is an old friend of students, and those of them who need to study not only the substantive law of crime but also the effectuation of that law in practice will be glad to have this newly revised version of the procedural portions of the main work. Although the emphasis in the Magistrates' Courts Act, 1952, was on consolidation rather than reform, yet one can see that a great deal of rewriting has been necessary to put the text into its present form, consistent as it is with the wording of the latest statutes. By far the greater part of the book is constructed of statutory provisions, rules and cases, skilfully arranged and digested for convenience of reference and assimilation. The whole forms an admirable outline which will not be disdained by those practitioners whose truck with criminal matters is spasmodic.

The Law and Practice Relating to Exempt Private Companies. By A. J. BALCOMBE, M.A., of Lincoln's Inn, Barrister-at-Law. 1953. London: Jordan & Sons, Ltd. 15s. net.

As the standard textbooks do not in general do much more than reproduce or summarise the provisions of the Companies Act, 1948, with regard to exempt private companies, a book which treats the subject in reasonable detail is likely to be useful. This book is undoubtedly of value, because the author has covered the ground well and made quite a few enlightening comments on particular points. Whether the book will find any large demand is questionable, because the law regrettably favours in practice the company whose officers know little about the law or about their shareholders—such an officer may feel able to certify that *to the best of his knowledge and belief* the relevant conditions are satisfied and thus secure for his company the privileges of an exempt private company, even though, in fact, the company is not exempt. Those who read this book will appreciate that a company officer signing such a certificate must have taken reasonable steps to ascertain the position; they will also appreciate that, even if all the facts are known, it may be by no means easy to make up one's mind whether the relevant conditions are satisfied. While the text of this book can certainly be improved, it is of quite high standard and the book can be recommended.

Whitaker's Almanack, 1954. London: J. Whitaker & Sons, Ltd. Complete Edition 15s. net. Shorter Edition, 7s. 6d. net. Library Edition, £1 10s. net.

This edition of Whitaker records Coronation Year and for the first time contains a number of photographs depicting events of the year. As usual there is much new matter: the Press Council and the Federation of Rhodesia and Nyasaland, for instance, are fully treated. But unless the reader tethers his interest firmly to the subject in hand Whitaker is, happily, likely to spend as much of his time as it saves. What a difficult book it is to put back on the shelf. Is the taste for miscellaneous information a debased one? How many people are aware that the first English monarch known to have reached the age of seventy was George II?

The Evening News London Year Book, 1954. Second Year. Edited by GEORGE BEAL. London: Associated Newspapers, Ltd. 1s. 6d. net.

"10,000 facts about London," boasts this handbook, reminding us of Thurber's drawing of the man about whom two awestruck but depressed ladies are whispering: "He doesn't know anything but facts." But in truth this work is the reverse of arid, and its photographs, in particular, are extraordinarily well chosen. Amid a wealth of exact information and stimulating description we note a record of Greater London and certain places outside it by administrative areas, showing area, population, births, deaths and marriages, rateable value, rates in the pound, housing figures, mayors and chairmen, and Members of Parliament, a record of the Home Counties containing similar details, a list of local districts showing to which council each owes allegiance, a section entitled "The Law and London," which locates the courts by both jurisdiction and geography, and a collection of statistics about coroners' inquests. This book is good value for money.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

EAST AFRICA: LANDLORD AND TENANT: PARTIAL EJECTMENT: APPEAL TO PRIVY COUNCIL: COMPETENCY: "VALUE"

Meghji Lakhamshi and Brothers *v.* Furniture Workshop

Lord Tucker, Lord Keith of Avonholm and Mr. L. M. D. de Silva
13th January, 1954

Appeal from the Court of Appeal for Eastern Africa.

Pursuant to an agreement in writing, dated 2nd May, 1941, the respondents became tenants of the appellants of plot No. 45/46, Thika Township, in the Central Province of Kenya, for a period of twelve months from 1st May, 1941. The plot comprised a building or buildings containing two shops and five living-rooms and an open space measuring about 20 feet by 40 feet, which open space was the subject-matter of the present proceedings. On the expiration of the tenancy the respondents continued in possession as statutory tenants, protected from eviction by the provisions of the Increase of Rent (Restriction) Ordinance, 1949, and similar earlier provisions. By an application in writing, dated 2nd May, 1950, and made pursuant to the Ordinance of 1949, the appellants applied to the Central Rent Control Board for an order under s. 16 (1) (*k*) of the Ordinance evicting the respondents from the open space. Section 16 (1) provides that: "No order for the recovery of possession of any premises to which this Ordinance applies, or for the ejectment of a tenant therefrom, shall be made unless: . . . (*k*) the landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, in which case the Central Board . . . may include in any ejectment order for such purpose an order requiring the landlord to grant to the tenant a new tenancy of the reconstructed or rebuilt premises or part thereof on such terms as may be reasonably equivalent to the old tenancy . . . and imposing such reasonable conditions as the Board may think necessary . . ."

The appellants' application to the Central Rent Control Board was dismissed on the ground that the board had no jurisdiction to make an order for partial ejectment. On appeal to the Supreme Court of Kenya it was held that the rent board had jurisdiction to make the order claimed, and the case was remitted to the board for further consideration on the merits. On appeal by the appellants to the Court of Appeal for Eastern Africa it was held that the Supreme Court had rightly decided that there was jurisdiction in the rent board to order possession of part of the premises, but that the case should not have been remitted for further consideration since the application did not come within the ambit of s. 16 (1) (*k*) of the Ordinance, under which the claim had been made, since the landlords were not asking for possession for the purpose of reconstruction or rebuilding, and that the application should have been made under s. 5 (1) (*g*) of the Ordinance, under which the rent board had power, for the purpose of enabling additional buildings to be erected "to make orders permitting landlords to excise vacant land out of premises . . ." On the hearing of the present appeal the respondents contended by way of preliminary objection that the value of the matter in dispute on the appeal was, and had been at all material times, less than £500, and that therefore, in view of the terms of art. 3 (*a*) of the Eastern African (Appeal to Privy Council) Order in Council, 1951, the appeal was not competent.

LORD TUCKER, giving the judgment of the board, said that art. 3 (*a*) of the Order in Council of 1951 provided that an appeal should lie as of right from any final judgment of the Court of

Appeal " where the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards." Under whichever limb of art. 3 (*a*) a case might fall, the " value " must be looked at from the point of view of the appellant. The present case fell within the latter part of the article which dealt with " some claim or question to or respecting property . . . of the said value or upwards," and on the true construction it was the value of the property, not the value of the claim or question, which was the determining factor. Looked at from the angle of the appellant landlords here, the value of the property, vacant possession of which they were claiming, was correctly taken on a capital value basis, which in this case exceeded £500, and therefore under the article an appeal lay as of right. It did not necessarily follow that the result would have been the same if the respondent tenants had been appellants, and the board did not intend to imply any doubt as to the correctness in this respect of the decisions of the Eastern African Court of Appeal in *Popatlal Padamshi* v. *Shah Meghji Hirji* (Civil Appeal No. 32 of 1951) and *Chogley* v. *Bains* (Civil Appeal No. 57 of 1952). With regard to the appeal on its merits, s. 16 (1) (*k*) was not so framed as to envisage or make provision for an order for partial ejectment, and accordingly the Central Rent Control Board had no jurisdiction, on the application of the appellants under s. 16 (1) (*k*), to make an order for possession of a plot of land which formed part only of the demised premises which were within the scope of the Ordinance and the tenancy of which had been determined. With regard to the submission to the effect that, assuming that the application properly fell to be made under s. 5 (1) (*g*), the rent board should have dealt with it under that section or given the appellants an opportunity of amending, the short answer was that the rent board were never asked to give leave to amend, and in any event the grant or refusal of such leave was a matter of discretion with the exercise of which their lordships would not interfere.

Appeal dismissed.

APPEARANCES: *S. P. Khambatta*, Q.C., *T. B. W. Ramsay* and *Sirimevan Amerasinghe* (*T. L. Wilson & Co.*); *Michael Albery* (*Herbert Oppenheimer, Nathan & Vandyk*].

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] . [2 W.L.R. 159

CRIMINAL LAW: MURDER: WHETHER MENS REA

Thabo Meli and Others *v.* R.

Lord Goddard, C.J., Lord Reid and Mr. L. M. D. de Silva

13th January, 1954

This was an appeal, by special leave *in forma pauperis*, from a judgment and sentence given and passed in the High Court of Basutoland on 26th March, 1953, whereby the four appellants were convicted and sentenced to death on a charge of having murdered one Ntlobiseng Lekhoo, a Mosuto male. They had pleaded not guilty. It was alleged that the deceased had been brought to a hut on 12th July, 1952, given beer, and, while in a partially intoxicated condition, struck on the head with an instrument, and then carried out of the hut and left in the open. The main and substantial questions in this appeal arose from the conflict as regarded the cause of the death of the deceased, between the evidence of two self-confessed accomplices upon which the case for the prosecution was mainly based, and the medical evidence called on behalf of the prosecution. Both the accomplices gave evidence to the effect that they believed the deceased to be dead as a result of the blows in the hut. The medical evidence was to the effect that the deceased had not died as a result of the blows, but that his death was due to exposure, and the trial judge found as a fact that he did not die from the blows but from exposure. In those circumstances it was submitted for the appellants, *inter alia*, that they ought not to have been and were wrongly in law found guilty of having murdered the deceased; that according to the Roman-Dutch law, which was applicable in Basutoland, a fundamental and essential requirement in the proof of a charge of murder was an *animus occidendi* or intention on the part of those charged therewith to kill, and the killing, in pursuance of such intention, of the person murdered. So, it was said, in the case of the appellants, they could not according to that law have murdered the deceased, inasmuch as the death, as caused according to the medical evidence and found by the trial judge, was not and could not have been intended by them, since they believed the deceased was already dead when he was left out in the open, and his death by exposure, therefore, was, so far as the appellants were concerned, something unintended by them or which they could not have expected to happen. They had, it was contended, in regard to the death of the deceased as caused, according to the medical evidence and the finding of the judge, no *animus occidendi* or *mens rea*.

LORD REID, giving the judgment of the board dismissing the appeal, said that their lordships were prepared to assume that the accused believed that the deceased died as a result of the blows while in the hut. The accused then took the body out, rolled it over a low krantz or cliff, and dressed up the scene to make it look like an accident. It was said for the appellants that two acts were necessary and were separable: first, the attack in the hut; and, secondly, the placing of the body outside afterwards. It was said that, while the first act was accompanied by *mens rea*, it was not the cause of death; but that the second act, while it was the cause of death, was not accompanied by *mens rea*; and on that ground it was said that the accused were not guilty of any crime except, perhaps, culpable homicide. It appeared to their lordships impossible to divide up what was really one transaction in that way. There was no doubt that the accused set out to do all those acts in order to achieve their plan and as parts of it, and it was much too refined a ground of judgment to say that, because they were under a misapprehension at one stage and thought that their guilty purpose had been achieved before in fact it was, therefore they were to escape the penalties of the law. There appeared to be no case either in South Africa or in England which resembled the present. Their lordships could find no difference relevant to the present case between the law of South Africa and the law of England; and they were of opinion that by both laws there could be no separation such as that for which the appellants contended, so as to reduce the crime from murder to a lesser crime, merely because the accused were under some misapprehension for a time during the completion of their criminal plot. Appeal dismissed.

APPEARANCES: *S. N. Bernstein* and *A. Hughes-Chamberlain* (*Hy. S. L. Polak & Co.*); *Frank Gahan*, Q.C., and *J. G. Le Quesne* (*Burchells*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [1 W.L.R. 228

COURT OF APPEAL

PERPETUITY: ALTERNATIVE TRUSTS: WHETHER CHARITABLE INTENT

In re Spensley's Will Trusts; Barclays Bank, Ltd. v. Staughton and Others

Evershed, M.R., Jenkins and Morris, L.JJ. 8th December, 1953

Appeal from Vaisey, J.

The testator, Howard Spensley, by cl. 14 of his will, devised a house and lands to the National Trust for Places of Historic Interest or National Beauty upon trust, after the prior life interests of his sisters, " for the use of the High Commissioner or other person representing the Government of the Commonwealth of Australia in England for the time being to be used by him as a country residence in a way similar to that in which Chequers is used by the Prime Minister of England. Should the Government of the Commonwealth of Australia refuse this bequest at the time of my death or renounce it at any future date then for such other uses preferably for some purpose in connection with Australia as the said National Trust and my sister . . . if then alive may jointly decide or if " this sister " be not then alive as the said National Trust may decide." The testator died in 1938 and in the same year the High Commissioner for the Commonwealth of Australia by deed renounced the trust and the National Trust disclaimed the trusteeship. Barclays Bank, Ltd., one of the trustees of the will, took out a summons asking whether the trust contained in cl. 14, subject to the life interests, had failed or was a valid charitable trust. Vaisey, J., held that it was. On appeal by beneficiaries interested in the testator's residuary estate:

JENKINS, L.J. (delivering the first judgment) said that a gift to charity, unless taking effect on failure or determination of a previous gift to charity, must take effect, if at all, within the perpetuity period. The primary gift in favour of the High Commissioner of Australia was not a valid charitable trust. On the true construction of that trust the Government of Australia could renounce the benefit of the primary trust after accepting it and enjoying it for any period. The primary

trust, accordingly, might take effect and continue for a period longer than that permitted by the rule against perpetuities and then fail, with the consequence that the alternative trust was invalid as infringing the rule against perpetuities, even if it could be upheld as a valid charitable trust. After referring to the observations of Lord Macnaghten in *Dunne* v. *Byrne* [1912] A.C. 407, 409; 28 T.L.R. 257, and of Sir Wilfred Greene, M.R., in *In re Ashton* [1938] Ch. 482, 494; [1938] 1 All E.R. 707, his lordship distinguished *In re Flinn* [1948] Ch. 241; 64 T.L.R. 203; [1948] 1 All E.R. 541. He said that where there was a gift to a holder of an office of a charitable character *virtute officii*, with merely superadded words conferring wide powers of disposition on the principle applied in *In re Flinn*, the gift would *prima facie* be charitable by virtue of the charitable character of the office. On the other hand, if the gift was to a trustee bearing a charitable character, or holding a charitable office on trusts which according to their terms were not, or were not exclusively or necessarily, of a charitable nature, the scope of the trust was not limited by reference to the character of the trustee. In the present case, bearing in mind that the National Trust were appointed, at any rate in so far as the primary trust was concerned, for a purpose which was both outside the purposes for which the trust was formed and which was also non-charitable, the alternative gift could not properly be upheld as charitable on the ground of the appointment of the National Trust as trustees. Accordingly, the alternative trust failed to qualify as a valid charitable trust.

EVERSHED, M.R., and MORRIS, L.J., agreed. Appeal allowed.

APPEARANCES: *E. Blanshard Stamp*; *D. S. Chetwood*; *H. Hillaby* (*Radcliffes & Co.*); *J. A. R. Finlay*, *J. W. Mills*, and *Nigel Warren* (*Leman, Harrison & Flegg*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 145

AGRICULTURAL HOLDING: COMPENSATION FOR DILAPIDATION: ARBITRATOR TO REFER TO CONTRACT

Barrow Green Estate Co. *v.* Executors of Walker, deceased

Somervell, Denning and Romer, L.JJ. 18th December, 1953

Appeal from Epsom County Court.

In the lease of an agricultural holding the landlord covenanted to repair the fixed equipment before the tenant went into possession, and both parties made certain covenants as to their respective obligations to repair the fixed equipment thereafter. On the death of the tenant his representatives quitted the holding after a notice to quit. In arbitration proceedings the landlord claimed compensation under s. 57 (1) of the Agricultural Holdings Act, 1948, in respect of dilapidations and damage, and the question arose whether the arbitrator was (*a*) bound, or (*b*) entitled, to have regard to the terms and conditions (i) of the lease, (ii) of any other agreement between the parties, and (iii) of the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948 (S.I. 1948 No. 184), which schedules certain standard provisions regarding the maintenance of fixed equipment which "shall be deemed to be incorporated in every contract of tenancy of a holding . . . except in so far as they would impose on one of the parties to an agreement in writing a liability which under the agreement is imposed on the other." The arbitrator answered all the questions in the affirmative. His decision was reversed by the county court judge on a case stated at the landlord's request. The tenant appealed.

DENNING, L.J., said that it was clear from ss. 9, 10 and 11 of the Agriculture Act, 1947, that Parliament intended that fixed equipment should be properly maintained and repaired either by the owner or the occupier. By the regulations, if the contract was silent on the matter, the tenant was responsible; but in so far as the lease put the responsibility on the owner, then the contractual responsibility remained intact: see, for instance, ss. 15 (3) and 37 (1) of the Act of 1947. The landlord had relied on ss. 10 (3) and 11 (3) of that Act, but those provisions were only designed to ensure that there should be no overlap. Accordingly, the arbitrator, in assessing the tenant's responsibility, must take into account any specific obligations which by contract were placed on the landlord. The tenant could not be made to pay for the landlord's breaches of contract.

SOMERVELL and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *A. C. Goodall* (*Church, Adams, Tatham & Co.*, for *Burges, Salmon & Co.*, Bristol); *J. Dean* (*Wheeler, Brill and John*, Oxted).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 231

CHANCERY DIVISION

CHARITY: WAR MEMORIAL COTTAGE HOSPITAL: NATIONALISATION OF HOSPITAL: NAME AND OBJECTS OF CHARITY ALTERED

***In re* Bagshaw, deceased; Westminster Bank, Ltd. *v.* Taylor and Others**

Danckwerts, J. 13th January, 1954

Adjourned summons.

A testatrix, by her will dated 17th July, 1942, gave her residuary estate to the Bakewell and District War Memorial Cottage Hospital, which was founded in 1921 as an unincorporated charitable institution, wholly maintained by voluntary contributions, "for the reception and relief of sick or temporarily disabled persons as a permanent memorial to the officers and men belonging to Bakewell and district who fell in the Great War." In 1946 the governing body of subscribers became anxious about the hospital's future, having regard to the National Health Service Bill, and by resolutions passed in 1946 and 1947 under the powers conferred by their rules, and under the trust deed, altered the name of the charitable institution to the Bakewell and District 1914–18 War Memorial Charity, and the objects as follows: "Primarily the provision of such additional hospital, medical, and other benefits of a charitable nature for the inhabitants of the parish of Bakewell, and surrounding parishes within a radius of five miles from the Memorial Cross in Bakewell, and secondarily towards such relief as is charitable amongst necessitous ex-servicemen or women of the war 1914–18 or the war 1939–45 or their dependents resident in the parishes aforesaid, and the provision of any necessary assistance . . ." On 5th July, 1948, the National Health Service Act, 1946, came into force and the site, buildings and endowments of the cottage hospital vested in the Minister of Health. Certain funds were not, however, taken over under the Act. The testatrix died in 1951; the bequest under her will was claimed by the charity under its new name, by the Sheffield No. 3 Hospital Management Committee, in whose area was the cottage hospital, and by the next of kin.

DANCKWERTS, J., said that the claim of the next of kin must fail at the outset, since it was plain on the authorities that the bequest was either a gift for the charity which still existed or for the purpose designated by the description in her will. It was established by *In re Faraker* [1912] 2 Ch. 488 and *In re Lucas* [1948] Ch. 424 that a charity founded as a perpetual charity did not come to an end, although its objects and name were altered according to the due process of the law. There was no distinction in principle between the alteration of the objects and name under a scheme formulated by the court or Charity Commissioners, as in those cases, and under the charity's own rules, as in the present case; and the bequest being to a plainly identified charity, it took effect in favour of the charity with its new name and new objects. Declaration accordingly.

APPEARANCES: *W. S. Wigglesworth* (*Woodcock, Ryland & Co.*, for *Goodwin & Cockerton*, Bakewell); *R. O. Wilberforce* (*Cree, Godfrey and Wood*, for *Brooke Taylor & Co.*, Bakewell); *Michael Browne* (*Gibson & Weldon*, for *L. J. Thomas*, Sheffield); *John Monckton* (*Woodcock, Ryland & Co.*, for *Goodwin & Cockerton*, Bakewell); *Denys Buckley* (*Treasury Solicitor*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 238

CHARITY: BEQUEST FOR "COMMERCIAL EDUCATION": PRIMARY TRUST OF PUBLIC NATURE: DIRECTION TO PREFER LIMITED CLASS

***In re* Koettgen's Will Trusts; Westminster Bank, Ltd. *v.* Family Welfare Association Trustees, Ltd., and Others**

Upjohn, J. 15th January, 1954

Adjourned summons.

A testatrix bequeathed her residuary estate on trust "for the promotion and furtherance of commercial education . . ." The will provided that "The persons eligible as beneficiaries under the fund shall be persons of either sex who are British born subjects and who are desirous of educating themselves or obtaining tuition for a higher commercial career but whose means are insufficient or will not allow of their obtaining such education or tuition at their own expense . . ." She further directed that in selecting the beneficiaries "it is my wish that the . . . trustees shall give a preference to any employees of John Batt and Co. (London), Ltd., or any members of the families of such employees; failing a sufficient number of beneficiaries under

such description then the persons eligible shall be any persons of British birth as the . . . trustees may select, provided that the total income to be available for benefiting the preferred beneficiaries shall not in any one year be more than 75 per cent. of the total available income for such year." In the event of the failure of these trusts, there was a gift over to a named charity. It was admitted that the trust was for the advancement of education, but it was contended for the charity that, having regard to the direction to prefer a limited class of persons, the trusts were not of a sufficiently public nature to constitute valid charitable trusts.

UPJOHN, J., said that the persons eligible had to be persons of either sex who were British born subjects and who were desirous of educating themselves or obtaining tuition for a higher commercial career but whose means were insufficient. If the will had concluded there, the trust would clearly have been a valid charitable trust, having regard to the admission that a gift for commercial education was for the advancement of education. There was, however, a positive direction to give a preference to the employees of John Batt & Co. and members of their families. In some years there might be sufficient members of such limited class to take up the 75 per cent. available for them, and in other years there might not be. The evidence was inconclusive on this point. He had been referred to *In re Compton* [1945] Ch. 123; *Oppenheim* v. *Tobacco Securities Trust, Ltd.* [1951] A.C. 297; and *In re Scarisbrick* [1951] Ch. 622. He proposed to refer only to the summary of the law in the judgment of Jenkins, L.J., in *In re Scarisbrick*. It was at the stage when the primary class of eligible persons was ascertained that the question of the public nature of the trust had to be decided. If, when selecting from that primary class, the trustees were directed to make a further selection from the employees of the company and members of their families, that could not affect the validity of the primary trust. On the true construction of the will, this was not primarily a trust for persons connected with John Batt & Co. and the class of person to benefit was not confined to them, and the trust contained in cll. 7 and 8 of the will of the testatrix was a valid charitable trust. Declaration accordingly.

APPEARANCES: *T. A. C. Burgess* (*Roche, Son & Neale*, for *Shepheards & Bingley*, Kensington); *G. D. Johnston* (*Lovell, Son & Pitfield*; *Hector Hillaby* (*E. F. Turner & Sons*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 166**

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Birmingham Corporation Bill [H.L.] [21st January.
Brighton Corporation Bill [H.L.] [21st January.
Caernarvon Corporation Bill [H.L.] [21st January.
Coventry Corporation Bill [H.L.] [21st January.
Derbyshire County Council Bill [H.L.] [21st January.
Dover Harbour Consolidation Bill [H.L.] [21st January.
Falmouth Docks Bill [H.L.] [21st January.
Local Government (Financial Provisions) (Scotland) Bill [H.C.] [21st January.
London County Council (General Powers) Bill [H.L.] [21st January.
Manchester Corporation Bill [H.L.] [21st January.
Mersey Docks and Harbour Board Bill [H.L.] [21st January.
Newcastle upon Tyne Corporation Bill [H.L.] [21st January.
Northern Assurance Bill [H.L.] [21st January.
Orpington Urban District Council Bill [H.L.] [21st January.
Stroudwater Navigation Bill [H.L.] [21st January.
Summary Jurisdiction (Scotland) Bill [H.L.] [21st January.

To consolidate certain enactments relating to summary jurisdiction and procedure in Scotland with such corrections and improvements as may be authorised under the Consolidation of Enactments (Procedure) Act, 1949.

Swinton and Worsley Burial Board Bill [H.L.] [21st January.
Tees Conservancy Bill [H.L.] [21st January.
Tees Conservancy (Deposit of Dredged Material) Bill [H.L.] [21st January.
Tyne Improvement Bill [H.L.] [21st January.
Warehousemen Clerks and Drapers' Schools Bill [H.L.] [21st January.

Read Second Time:—

Charitable Trusts (Validation) Bill [H.L.] [19th January.
Cinematograph Film Production (Special Loans) Bill [H.C.] [21st January.

In Committee:—

Food and Drugs Amendment Bill [H.L.] [20th January.
Navy, Army and Air Force Reserves Bill [H.C.] [21st January.

B. DEBATES

The LORD CHANCELLOR, on the Second Reading of the **Charitable Trusts (Validation) Bill,** said the purpose of the Bill was to validate in certain respects, and subject to certain qualifications and savings, certain imperfect trusts. These were defined as trusts which could be used exclusively for charitable purposes and could also be used for non-charitable purposes. As regards the period before the Bill came into operation, such trusts would be treated as wholly charitable, so that the trustees would not be personally liable if they had disposed of the trust property for wholly charitable purposes. As regards the future, trustees would not be liable if they used the money only for charitable purposes. The Bill would cover all dispositions from the simplest settlement or will upwards which would have been valid if the objects had been exclusively charitable. It would exclude any disposition or covenant which, before 16th December, 1952, had been treated as invalid on the ground that the objects were not exclusively charitable. If, however, the disposition had been treated as invalid for income tax purposes only, that was not to affect the operation of the Act.

Clause 3 of the Bill would provide limited saving rights for persons who might have a claim to property which was the subject of an imperfect trust provision on the grounds of its invalidity. The position of persons under a disability would also be protected in this clause. The trustees, however, would be enabled by the Bill to proceed on the footing that the trusts were valid, unless and until they received an express notice of claim.

Clause 4 provided that the Act would not apply for the purpose of any legal proceedings begun before 16th December, 1952. [19th January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Electricity Reorganisation (Scotland) Bill [H.C.] [20th January.

To transfer the functions of the Minister of Fuel and Power in Scotland in relation to electricity to the Secretary of State; to establish the South of Scotland Electricity Board; to transfer the functions of the British Electricity Authority in the south of Scotland and of the Scottish Area Boards to that Board; to amend the Hydro-Electric Development (Scotland) Act, 1943; and for purposes connected therewith.

Industrial Organisation and Development Bill [H.C.] [22nd January.

To amend s. 9 of the Industrial Organisation and Development Act, 1947.

Merchant Shipping Bill [H.C.] [20th January.

To amend the law with respect to the deductions to be made for the space occupied by the propelling power in measuring the tonnage of merchant ships in which the tonnage of the space solely occupied by and necessary for the proper working of the boilers and machinery does not exceed 13, or in the case of ships propelled by paddle wheels 20, per cent. of the gross tonnage.

Teachers (Superannuation) Bill [H.C.] [22nd January.
To amend the Teachers (Superannuation) Acts, 1918 to 1946, and the Education (Scotland) Acts, 1939 to 1953, so far as they relate to superannuation and to the employment of teachers over the age of sixty-five years; and for purposes connected therewith.

Read Second Time :—

Agriculture (Miscellaneous Provisions) Bill [H.C.] [19th January.
Licensing (Seamen's Canteens) Bill [H.L.] [19th January.
Mines and Quarries Bill [H.C.] [22nd January.

B. Questions

Planning Appeals

Mr. Harold Macmillan stated that 4,456 appeals were lodged with the Ministry of Housing and Local Government during 1953. During the same period 1,013 were allowed, 1,206 were dismissed and 1,341 withdrawn or otherwise settled. He agreed that the number of planning appeals was rising and thought this was due to the increasing speed with which planning appeals were being dealt with. He would consider a suggestion that planning decisions should be expressed in clear and comprehensible terms. [19th January.

Estate Duty Office Valuations

Mr. Erroll asked the Chancellor of the Exchequer if he was aware that in a recent court case concerning the valuation of unquoted shares for estate duty purposes, it was made known that the Estate Duty Office had originally valued the shares at £4 4s. 2d. each, had then revised the estimate to £1 14s. and then to £1 5s. each, before court proceedings commenced, while, as a result of the proceedings, the judge valued them at only 19s. each; and asked the principles which guide the Estate Duty Office when making such valuations.

Mr. Boyd-Carpenter said £3 was the highest figure put forward by the Estate Duty Office. The taxpayer's lowest figure had been 11s. 3d. Independent experts consulted by the Revenue quoted £1 14s. and £1 5s. Other experts at the hearing had suggested values from 12s. upwards. These wide differences in expert valuations reflected the difficulty of valuing shares for which no open market existed.

The principle which the law laid down was that similar shares should be valued at the actual or notional equivalent of the market price. [19th January.

Insurance Schemes for Local Authority Houses

Questioned by Mr. Hay as to the legality of schemes operated by local authorities for insuring the contents of their tenants' dwelling-houses, Mr. Harold Macmillan said that, while he had no authority to interpret the statutes, he was advised that, unless local authorities had a financial interest in such contents, they had no powers to operate insurance schemes. Action would lie not with him but with the district auditor. [19th January.

Crown Property (Lettings)

Sir Thomas Dugdale said that, instead of letting at the full market rent, the Commissioners of Crown Lands were sometimes ready to accept a lower rent and to take the balance as a capital payment or fine. This was quite a normal practice in letting property and he saw no reason to stop it. [21st January.

STATUTORY INSTRUMENTS

Courts Martial Appeal Court (Fees and Expenses) Regulations, 1954. (S.I. 1954 No. 21.)
These regulations, which came into operation on 25th January, prescribe the fees payable to counsel and solicitors assigned to a legally aided appellant under s. 10 of the Courts-Martial (Appeals) Act, 1951. Counsel are to receive a minimum of £5 10s. and a maximum of £25 19s., and solicitors a minimum of £5 5s. and a maximum of £16 16s., together with travelling and other out-of-pocket expenses. The actual fee in a particular case will be determined within these limits by the registrar of the court.
Import of Goods (Control) Order, 1954. (S.I. 1954 No. 23.)
Iron and Steel Scrap (Amendment No. 2) Order, 1954. (S.I. 1954 No. 50.)
Draft **Merchandise Marks** (Imported Goods) No. 10 Order, 1934, Amendment No. 2 Order, 1954.
Police Regulations, 1954. (S.I. 1954 No. 27.) 5d.
Renfrew County Council (Lochwinnoch &c.) Water Order, 1954. (S.I. 1954 No. 46 (S.15).)
Retention of Cables, Main and Pipes under Highways (Norfolk) (No. 1) Order, 1954. (S.I. 1954 No. 40.)
River Purification Authority (Commencement No. 1) Order, 1954. (S.I. 1954 No. 24 (C.1) (S.3).)
Rothesay Water Order, 1954. (S.I. 1954 No. 47 (S.16).)
Safeguarding of Industries (Exemption) (No. 1) Order, 1954. (S.I. 1954 No. 20.)
Sheriff Courts (County of Angus) Order, 1954. (S.I. 1954 No. 39 (S.13).)
Stopping up of Highways (Gloucestershire) (No. 1) Order, 1954. (S.I. 1954 No. 41.)
White Fish Authority (Returnable Containers) Regulations Confirmatory Order, 1954. (S.I. 1954 No. 28.) 5d.
Wild Birds Protection (County of Aberdeen) Order, 1954. (S.I. 1954 No. 30 (S.4).)
Wild Birds Protection (County of Ayr) Order, 1954. (S.I. 1954 No. 31 (S.5).)
Wild Birds Protection (County of Clackmannan) Order, 1954. (S.I. 1954 No. 32 (S.6).)
Wild Birds Protection (County of Dunbarton) Order, 1954. (S.I. 1954 No. 33 (S.7).)
Wild Birds Protection (County of Fife) Order, 1954. (S.I. 1954 No. 34 (S.8).)
Wild Birds Protection (County of Midlothian) Order, 1954. (S.I. 1954 No. 37 (S.11).)
Wild Birds Protection (County of Ross and Cromarty) Order, 1954. (S.I. 1954 No. 38 (S.12).)
Wild Birds Protection (County of Stirling) Order, 1954. (S.I. 1954 No. 36 (S.10).)
Wild Birds Protection (Royal Burgh of Kirkcaldy) Order, 1954. (S.I. 1954 No. 35 (S.9).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

OBITUARY

Mr. H. S. Chamberlain

Mr. Henry Seymour Chamberlain, retired solicitor, of Bognor Regis, died on 5th January, aged 70. Admitted in 1906, he was a County Alderman of the West Sussex County Council.

Mr. J. I. Donaghy

Mr. Joseph I. Donaghy, solicitor, of Belfast, died on 14th January, aged 86. He was a past-president of the Incorporated Law Society of Northern Ireland, and at the beginning of the century was registrar to the late Judge Todd. He was admitted in 1892.

Mr. P. J. M. Loft

Mr. Percy John Martin Loft, the oldest practising solicitor in Bishop Auckland, died on 13th January, aged 83. He was admitted in 1893.

Mr. H. Ball

Mr. Henry Ball, solicitor, of London, W.C.1, died on 23rd January. He was admitted in 1903.

Mr. G. F. Emmett

Mr. George Frederick Emmett, solicitor, of Norwich and Cromer, died on 3rd January, aged 76. He was admitted in 1920.

Sir Noel B. Livingston

Sir Noel Brooks Livingston, until lately president of the Legislative Council of Jamaica, died on 17th January, aged 71. In 1936 he was appointed Custos Rotulorum for the parish of Kingston, and in 1945 he was appointed a solicitor of the Supreme Court of Judicature of Jamaica. In the same year he was elected president of the new Legislative Council. He was admitted in 1906 and was knighted in 1941.

POINTS IN PRACTICE

Measure of Damages on Purchaser's Failure to Complete

Q. A client of ours, *A*, last year contracted to sell Blackacre to *B*, the property being sold subject to the National Conditions of Sale, 15th ed. *B* failed to complete in accordance with the contract and, after due notice, *A* resold to *C*. *B's* deposit (retained by *A*) is more than sufficient to cover the slight loss in price and the expenses of the second sale, but, before reselling to *C*, *A* spent about £80 in redecorating the property in order to make it more attractive to prospective purchasers. Taking into account the £80 spent on decorations, *A* is about £70 out of pocket. *B's* solicitors contend that *A* cannot claim, in an action for damages for breach of contract, the moneys expended by him in decorating the premises, and we are unable to find any authority on the point.

A. In our opinion the amount spent on decorations must be taken into account in ascertaining the measure of the damages to which *A* is entitled, although we do not consider that it necessarily follows that the full cost of the decorations can be included as such and claimed as if they were "special damage." The damages to which *A* is entitled are such as would put him in the same position as if *B* had completed his purchase (*Robinson* v. *Harman* (1848), 1 Ex. 850). As, in the present case, there had been no resale in the same condition as that in which the property was sold to *B*, the damages should be calculated by comparing the contractual selling price to *B* and the value of the property at the date of the breach but without the repairs having been executed. *A* is not obliged either to redecorate or resell in order to provide a yardstick for the measurement of the damages (*Hadley* v. *Baxendale* (1854), 9 Ex. 341), which accordingly can only be measured by comparing price with value at the date of the breach.

Mortgage—Appointment of Receiver—Whether Receiver Entitled to Whole Rent of Furnished Letting

Q. A mortgagor is considerably in arrear with the interest due under a mortgage created by deed. He has let the property furnished. If the mortgagee gives notice to the tenant or appoints a receiver to receive the rent, can the mortgagee or receiver take the whole of the rent without allowing any part thereof to the mortgagor in respect of the furniture? It is assumed that the lease or tenancy agreement makes no apportionment of the rent. If the rent has to be apportioned what procedure or arrangements exist for this?

A. We know of no authority on the point in question but in so far as the receiver is entitled to the income of the mortgaged premises we consider that he is entitled to assume that all rents are in respect of the property until the contrary is established. Accordingly, if either the mortgagor or the tenant desires an apportionment of the rent so that the part payable in respect of the furniture shall continue to be paid to the mortgagor it is open to him to apply to the court for an apportionment.

Settled Land—No Trustees—Death of Life Tenant without Vesting Assent having been Executed—Vesting of Legal Estate

Q. *J F*, who died in 1918, by his will appointed *A P* executor and trustee and devised Blackacre to *S A B* for life and after her death to *R B* for life and after his death to *M B* absolutely. *S A B*, the first tenant for life, died in 1932 without any vesting assent having been executed. Probate of her will, save and except settled land, was granted to *R B*, and letters of administration with the will limited to the settled land vested in *S A B* at her death were granted to *A P*, the personal representative of *J F* (settlor). Again no vesting assent was executed and *R B*, the second tenant for life, died in 1953 and a full grant of probate of his estate has been granted to *M B*, the executor named in his will, who, it will be remembered, is absolutely entitled to Blackacre under the will of the settlor, the two successive tenants for life having died. We act for *M B* and would like to know what should be done in order to put the title to Blackacre in order. It appears to us that under the transitional provisions of the Law of Property Act, 1925, the legal estate in the settled land vested on 1st January, 1926, in *S A B* and from her passed to her special representative, *A P*. *A P* is now dead, and it seems that the legal estate is probably now vested in his legal personal representative. Is this correct?

We do not know who the personal representatives of *A P* are, but if there should turn out to be only one, can he make the necessary assent or should he appoint an additional trustee to act with him for this purpose?

A. We agree that under the transitional provisions of the Law of Property Act, 1925, the legal estate in Blackacre vested in *S A B* on 1st January, 1926, without any vesting assent being executed, and that as the land remained settled on her death the legal estate then passed to *A P* as her special administrator limited to settled land. On the death of *A P* the chain of representation did not, however, pass to his legal personal representative (Administration of Estates Act, 1925, s. 7). Accordingly a grant of letters of administration *de bonis non* limited to the settled land is required to the estate of *S A B*. The person entitled to such a grant will be the personal representative of *J F* and will be either the executor of *A P* or, if *A P* has no executor, the person who would now be entitled to letters of administration with the will annexed in respect of the estate of the original settlor, *J F*; and in that event it would appear necessary for that person to obtain such a grant before applying for letters of administration *de bonis non*. See Tristram and Coote's Probate Practice, 19th ed., pp. 224, 291.

Stamp Duty—Purchase of Land by One Company as Nominee for Another—Conveyance by Purchasing Company to Company Providing Purchase Money—Finance Act, 1930, s. 42

Q. In 1949 *X* Co., Ltd., purchased certain freehold property, but in order to comply with regulations which then operated, the freehold was conveyed to their subsidiary company, *Y* Co., Ltd. The whole of the purchase money was paid by *X* Co., Ltd., and that company now desire to have the property transferred to them, there being now no reason why this should not be done. Can the transaction be carried out by a deed bearing only a 10s. stamp? It is not contemplated that any consideration shall pass from *X* Co., Ltd., to *Y* Co., Ltd.

A. Where 90 per cent. of the issued share capital of one company is owned by another company any conveyance between such companies is exempt from *ad valorem* stamp duty as a conveyance on sale: Finance Act, 1930, s. 42. Quite apart from this statutory exemption, however, the conveyance will attract 10s. deed duty only, for the reason that the original purchase was by a nominee who is now conveying to the party who advanced the purchase money in the first place. For forms of conveyance, see Encyclopædia of Forms and Precedents, 3rd ed., vol. XV, p. 1143, and vol. VI, p. 20.

Maintenance for Wife in Desertion

Q. Is a wife who has deserted her husband barred, so long as she is in desertion, from claiming her right of maintenance against her husband? In Rayden on Divorce, 5th ed., para. 18 of Chapter 14, at p. 482, it is stated that a wife found guilty of adultery can still petition for a compassionate allowance. Reference is later made to "a guilty wife." Would "guilty wife" include a wife who has deserted her husband?

A. It seems that ss. 19 and 20 of the Matrimonial Causes Act, 1950, are in sufficiently wide terms to authorise the payment of maintenance to a wife in desertion in any proceedings in the Divorce Court *brought by the husband*, whether he seeks a divorce or a judicial separation. If the wife guilty of adultery can be given such an allowance, it would certainly appear that a wife guilty of the less serious matrimonial offence of desertion can likewise be given it. In Latey on Divorce, 12th ed., p. 777, it

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

is said that a respondent wife unable to support herself may be awarded a small amount of maintenance in a divorce suit and it can also be given where a decree of nullity is made against a wife. The husband can also be ordered to pay maintenance to his wife when he takes proceedings against her in a magistrates' court, but the only grounds on which he can take proceedings in that court are her adultery, her habitual drunkenness or her cruelty to his children. The wife herself cannot take proceedings for maintenance against her husband, either in the Divorce Court or in a magistrates' court, unless she can allege some matrimonial offence by him. How far her desertion would afford a defence to any such proceedings is outside the scope of this question; but, if she failed in her proceedings, no maintenance could then be awarded to her at all. The powers of the courts are limited to awarding maintenance (apart from interim maintenance pending the hearing) when a decree or a summary separation or maintenance order is made; they have no power where such proceedings are dismissed.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to approve the appointment of Mr. JOSEPH TUMIM, O.B.E., to be Deputy Chairman of the Court of Quarter Sessions for the County of Oxford, with effect from 19th January.

Mr. M. F. HULKS, solicitor, has been appointed assistant solicitor to Cambridge City Council in succession to Mr. J. K. N DAWSON, who has accepted a similar appointment with Somerset County Council.

Mr. COLIN CAMPBELL, assistant solicitor to Solihull Council for the past three years, is in February to become deputy town clerk of Boston, Lincs.

The following appointments are announced in the Colonial Legal Service: Mr. P. C. LEWIS, Crown Attorney, St. Lucia, to be Attorney-General, Leeward Islands; Mr. W. H. HANNAH to be Resident Magistrate, Northern Rhodesia; and Mr. J. K. HAVERS to be Crown Counsel, Kenya.

Personal Notes

Mr. Harold Arthur Fowler, solicitor, of Huddersfield, was married on 16th January to Miss Greta Lesley Kerry, of Leeds.

Mr. Richard Watkin Richards, solicitor, of Llangollen and Oswestry, was recently presented with a silver salver on his having acted as clerk to the Llangollen, Glynceiriog and Llansilin Justices for over thirty-five years.

Mr. J. R. Sampson, retired solicitor, of Bradford, has been re-appointed president, for the sixth term, of the Craven Drama Festival, with which he has been connected for over fifty years.

Miscellaneous

HUDDERSFIELD DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Huddersfield. The plan, as approved, will be deposited in the Council Offices for inspection by the public.

The Faculty of Laws of University College, London, has introduced, with effect from the present term, a new course of lectures on International and Comparative Air Law.

These lectures are held on Tuesdays, from 7–8.30 p.m. in the Lankester Theatre (Zoology Department). Further particulars may be obtained from the Faculty Clerk, Faculty of Laws, University College, London.

The Swiney Prize for the best published work on jurisprudence, which is offered by the Royal Society of Arts every five years, has been awarded for 1954 to Professor G. W. Paton, B.C.L., M.A., Vice-Chancellor of the University of Melbourne, for his "Textbook of Jurisprudence." The prize consists of £100 in cash and a silver cup of the same value.

The next Quarter Sessions for the County Borough of Smethwick will be held at the Law Courts, Crocketts Lane, Smethwick, on Tuesday, 9th February, at 10.30 a.m.

Wills and Bequests

Mr. H. Benson, solicitor, of Newcastle-upon-Tyne, left £27,246 (£27,159 net).

Mr. H. F. Gates, retired solicitor, of Hove, left £42,709 (£42,483 net).

Mr. E. N. Gundill, solicitor, of Pontefract, left £36,061 (£31,462 net).

Mr. F. W. Merriman, retired solicitor, of Pembroke, left £6,183 (£5,817 net).

Mr. R. F. Pawsey, solicitor, of Barnsley, left £28,109.

SOCIETIES

At the annual general meeting of the DORSET LAW SOCIETY, held at Dorchester on 1st December, 1953, Mr. W. A. Ffooks was elected President of the Society for the coming year and Messrs. D. Blanchard and E. N. G. Arkell, Vice-Presidents. The following were elected to serve on the Committee: Lt.-Col. G. G. H. Symes, Messrs. I. B. Barton, R. S. Hawkins, H. Kirk, H. O. Lock, A. W. Lyall, R. N. Neville-Jones, G. T. Ridge, J. Roper, P. M. Wickham and M. Yeatman. Mr. E. Stanley Smith was re-elected Honorary Secretary and Treasurer. The annual dinner will be held at the Gloucester Hotel, Weymouth, on Friday, 26th February.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme for February: Friday, 5th—Scottish Reels. The Law Society's Hall, Chancery Lane, W.C.2, commencing at 6 p.m. Refreshments will be provided. Members 1s., Guests 1s. 6d.; Tuesday, 9th—"New Articled Clerks" Evening. The Law Society's Hall, from 6 p.m.: Discussion, followed by questions to a panel consisting of a law lecturer, a solicitor and a senior articled clerk; Tuesday, 16th—First Meeting of the Debating Club to discuss formation of a team, award of prizes and to have an impromptu debate, at above address, at 7 p.m. preceded by a discussion from 6 p.m. onwards; Tuesday, 23rd—Theatre Party. Full details from Miss P. Baigent (Pollard 7542, evenings only).

The Society's tie is now on sale and members may order it from the Honorary Secretary, c/o S.A.C.S., The Law Society's Hall, Chancery Lane, W.C.2, marking envelopes "TIE." The tie is silk and is offered to members and ex-members of the Society at the cost price of 15s. each, post free. The design is of a pattern of small golden asses on a maroon background.

PRINCIPAL ARTICLES APPEARING IN VOL. 98

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).